

APPENDIX 5

U.S. Highway 14-16 Relocation Documents



Dave Freudenthal
Governor



John I. Cox
Director

Department of Transportation

16 EAST HAYSTACK LANE

SHERIDAN, WYOMING 82801

March 12, 2007

Owen Lindblom, P.E.
Civil Environmental Engineer
Foundation Coal West, Inc.
Eagle Butte Mine
P.O. Box 3040
Gillette, WY 82717-3040

Re: Foundation Coal West, Inc.
West Extension LBA Project
Campbell County
US 14/16 Relocation - Conceptual Study

Dear Mr. Lindblom:

This letter is in reference to and further amends the letter dated February 9, 2007 signed by B. Patrick Collins, P.E., Assistant Chief Engineer, regarding the acceptance of Foundation Coals proposal to relocate US 14/16 and to make the relocation alignment permanent. The Wyoming Department of Transportation accepts Foundation Coals proposal to relocate US 14/16 and to make the relocation alignment permanent. In addition, the Department understands that there are some risks involved, though such risks are believed to be minimal. However, if problems such as operational and/or safety issues develop, WYDOT may seek some recourse to the permanent utilization of the new alignment. If you have any questions or concerns regarding this matter please do not hesitate to contact me at 307-674-2300.

Sincerely,

Kaylana Houston

for Mark Gillett
District Engineer

cc: Delbert A. McOmie, P.E., Chief Engineer
B. Patrick Collins, P.E., Assistant Chief Engineer
Paul Bercich, P.E., Highway Development Engineer
G. Michael Hager, P.G., Chief Engineering Geologist
Gregg Fredrick, P.E., State Bridge Engineer
Mike Gostovich, P.E., State Traffic Engineer
Rick Harvey, P.E., State Materials Engineer
Martin Kidner, P.E., State Planning Engineer
File

**STATE DECISION DOCUMENT
FOUNDATION COAL WEST, INC., EAGLE BUTTE MINE
PERMIT NO. 428-T5-R3, CHANGE NO. 10**

In compliance with Article 4 of the Wyoming Environmental Quality Act Foundation Coal West, Inc. has applied for a Form 11 revision at the Eagle Butte Mine in Campbell County, Wyoming. The application proposes to relocate a portion of Highway 14/16 within the Eagle Butte Mine Permit area. The application primarily updates Section 3.1.5 (Relationship to Man-Made Structures and Other Mining Operations) and Section 3.3 (Transportation Systems) and does not propose any substantive changes to the existing operation. This State Decision Document is updated to reflect the entire permit.

On the basis of information set forth in the application or from that otherwise available and known to the applicant, I find the applicant has affirmatively demonstrated that:

No. 1. The application is accurate and complete (W.S. §35-11-406(n)(I)).

The applicant has provided a sworn statement certifying that all of the information contained in the permit application is true and correct to the best of his knowledge. In addition, and to the extent necessary and appropriate, independent agency verification supports the accuracy of the application. All of the information required by the Environmental Quality Act and its implementing regulation is contained in the application. This includes identification of interests, compliance information, resource information, land use information, pertinent maps and plans, the permit fee, other agency applications or approvals, an operations plan, a reclamation plan, license information, insurance information, proof of publication, and proof of public notice.

The following standard condition will apply here in this State Decision Document and be stated on the Form 1 for Permit No. 428:

Eagle Butte Mine may not mine coal from any Federal coal lease prior to receiving approval from the Secretary of the U.S. Department of the Interior. If Eagle Butte Mine has any questions on this topic, it should contact the Land Quality Division.

No. 2. The reclamation plan can accomplish reclamation as required by the Act (W.S. §35-11-406(n)(ii)) and Wyoming Department of Environmental Quality, Land Quality Division Rules and Regulations, Chapter 4, Section 2.

(a) The mined land will be restored to a condition equal to or greater than its highest previous use.

Section 4.1 and Table 4.1-1 specify the premining and postmining land uses. All the categories were drawn from the suite of land use categories defined in the LQD Coal Rules and Regulations or the Wyoming Environmental Quality Act. All the

premining land use categories were reasonably well documented by combinations of historical data specific to the permit area and/or Campbell County. Specifically, the premining land uses of grazingland, cropland, pastureland, water resources and wildlife habitat will be reestablished (Section 4.1). These postmine land uses have not been altered by this amendment.

Vegetation baseline for the Scoria Amendment was complete. However, the terminology for the AP map unit in Section 2.8-6 has become confusing. *In order to resolve this confusion, the following condition will apply here in this State Decision Document and be stated on the Form 1 for Permit No. 428:*

Eagle Butte Mine shall revise Appendix D-8 during the next Amendment application to update terminology for the "Improved Pasture" vegetation type on Maps 2.8-2, 2.9-3, 2.8-4 and 2.8-5 and in appropriate text.

Water for stock and wildlife is furnished by stockponds, wells, Little Rawhide Creek and its tributaries. Described in Subsection 4.6.1.5, six permanent impoundments classified as stockponds remain postmine. Postmine stockpond capacity is similar to premine although none of the premine ponds were permitted with the Wyoming State Engineer. No active surface water rights in the permit area were impacted by mining. Postmine surface water quantity and quality are addressed in Subsection 4.6.2.

Based upon the overall reclamation practices specified in Sections 4.1 through 4.7, the permittee has the sound potential to restore the approved postmining land uses. The permittee's relative success at permanent reclamation since the mine's inception also supports the contention that postmining land uses can and will be restored and that potential of the postmining land uses will equal or exceed the potential of the premining land uses.

- (b) *The approximate original contours of the land will be reestablished in a manner consistent with the proposed future use of the land (Chapter 4, Section 2(b)).*

The mine is considered a thin overburden mine as supported by a volume replacement ratio of 0.748 (Section 3.4.4). The postmine contouring plan is presented in Section 4.2. Contouring focuses on establishing a through drainage pattern in a northerly trend similar to premine. Approximate original contours will not be achievable even though virtually all overburden will be used to backfill mined areas. No in-pit or out-of-pit overburden stockpiles will remain postmine. Borrow from unmined lands will be restricted to highwall reduction areas. With this approach distinctive slopes will appear on the south and to a lesser extent on the east sides of the reclaimed pit area where highwalls have been reduced to a stable configuration. A commitment to construct slopes of 5:1 or less is included in Section 4.2. Plans for restoration of the hydrologic system are contained in Section 4.6.

- (c) *The reclamation plan provides for the removal, segregation, preservation, and replacement of topsoil or an approved substitute, and for the appropriate management of any toxic, acid-forming, or hazardous materials uncovered or created by the mining operation (Chapter 4, Section 2(c)(xi)).*

Topsoil /subsoil stripping and stockpiling plans are discussed in Section 3.4.2. Topsoil /subsoil replacement plans are located Section 4.3 of the permit. The combined topsoil and subsoil replacement depth is generally uniform, averaging 21 inches without the use of topsoil substitute materials. Topsoil and subsoil are not separately handled yet the plans assure that all materials determined by the baseline studies to be suitable for reclamation purposes will be salvaged, stockpiled for future reuse, or directly replaced on prepared backfill.

Overburden handling plans providing for the proper management for toxic, acid forming or hazardous materials are found in Section 3.4.4. These plans define materials of concern and provide burial options for the various materials. Generally, all deleterious materials will be buried a minimum of four feet beneath topsoil. Ten feet of burial depth will be provided where intermittent or perennial watercourses traverse the reclamation. These plans reflect currently recommended procedures that are designed to protect topsoil/subsoil resources and the waters of the state.

The regrade backfill sampling protocol is described in Subsection 5.2.2. The regraded spoil surface will be sampled in order to determine chemical suitability to a depth of four (4) feet, on a grid of five hundred (500) feet. Reconstructed intermittent or designed ephemeral channels (identified in Section 4.6 with generic cross sections) will be sampled to a depth of ten (10) feet every five hundred (500) lineal feet.

- (d) *Revegetation of all affected lands will be accomplished in a manner consistent with the reclamation plan and the proposed future use of the land (Chapter 4, Section 2(d)).*

Revegetation practices described in Section 4.4 details:

- methods to prepare the topsoil for seeding
- the permanent and temporary seed mixes and seeding rates
- shrub community restoration techniques and planting mixtures
- the methods and equipment for seed mix application
- the preferred calendar periods for applying seed mixes
- the techniques for mulching and other erosion control techniques
- pest and disease control, noxious weed control measures
- methods to protect newly seeded lands
- methods for the introduction of grazing practices

Section 4.8 and associated maps detail the progression of backfilling, grading, topsoil redistribution, and revegetation.

Section 5.5 specifies methods and schedules for interim vegetation monitoring and final bond release vegetation assessments.

The cumulative presentation of these methods and practices creates a sound potential that the permittee can establish:

- a diverse, self-renewing, permanent vegetative cover of the same seasonal variety native to the area.
- the requisite postmining composition and distribution of shrub patches.
- postmining plant communities which will support the postmining land uses.

The relative success of the permittee's permanent reclamation practices to date also support the contention that the practices specified in Section 4.4 attain the performance standards of the LQD Coal Rules and Regulations and the Wyoming Environmental Quality Act.

- (e) *Unchannelized surface water and ephemeral streams will be diverted around the operation or passed through sedimentation ponds to protect the operation and downstream water rights, and to control unnecessary erosion and water pollution (Chapter 4, Section 2(e), (f), and (h)).*

Surface water control practices and the design and performance standards for surface water control structures during mining are discussed in Section 3.5. Ephemeral flows are intercepted before entering active operations or are controlled within the active mining area. Water from disturbed areas is passed through approved treatment structures before being discharged off the permit area. Section 4.6 provides a discussion of Probable Hydrologic Consequences related to surface water quantity concluding that downstream water quantities will not be affected by the mining operation.

- (f) *Although the applicant proposes to mine near or through an intermittent stream, the original stream channel will be reclaimed. During and after the operation, the water quantity and quality of the stream, and its value as wildlife habitat, will be preserved (Chapter 4, Section 2(r)(ii)).*

Hydrologic control plans for the intermittent Little Rawhide Creek, including the current Little Rawhide Creek diversion, appear in Section 3.5. The East Prong of this drainage will be permanently diverted. All other channels flowing through the permit area exhibit ephemeral flow. Plans for hydrologic restoration in Section 4.6 explain how the affected portions of Little Rawhide Creek will be reestablished.

Water quality and quantity are projected in Section 4.6 to be similar to that in the premine setting. Surface water monitoring during and after mining is outlined in Section 5.3.

Valuable wetland habitat to be disturbed by mining will be reestablished. The U.S. Army Corps of Engineer (COE) approved plans for this aspect of reclamation are provided in Section 4.10.

- (g) *All permanent water impoundments will be constructed to prevent structural failures, safety hazards, and water contamination, and to accommodate revegetation. They will also meet the design criteria and performance standards outlined in Chapter 4, Section 2(g).*

Permanent impoundments listed in Subsection 4.6.1.5 are all stock ponds. Commitments to submit final designs to the Wyoming DEQ/LQD and the Wyoming State Engineer's Office for final approval prior to construction are included. Postmine water quality monitoring plans for these structures are included in Section 5.3. Revegetation plans are described in Section 4.4.

- (h) *The reclamation plan will ensure protection of the quantity, quality, and legal rights to surface water and ground water within and adjacent to the permit area. Surface water and ground water quality and quantity will be monitored during the course of mining and reclamation operations to determine the extent of the disturbance to the hydrologic balance (Chapter 4, Section 2(h) and (I)). The monitoring system is based on the results of the probable hydrologic consequences assessment and monitoring will be adequate to plan for modification of mining activities, if necessary, to minimize adverse effects on the water of the state. Plans for the proper installation, operation, maintenance and removal of all necessary monitoring equipment have been included in the permit application (Chapter 2, Section 2(b)(xi)).*

The reclamation plan will ensure protection of the quantity, quality, and legal rights to surface water and groundwater within and adjacent to the permit area. Plans to minimize disturbance to the hydrologic balance are presented in various portions of Section 4.6. The discussion of Probable Hydrologic Consequences is specifically provided in Subsection 4.6.3, concluding that no permanent impacts on the hydrologic regime will result due to mining. The plan to mitigate any affected adjudicated water right is also provided in Section 4.6.3. Proper sealing of all abandoned drill holes is presented in Sections 3.5.6 and 4.7.

Surface and groundwater monitoring plans during and after mining are presented in Section 5.3. The hydrologic monitoring plan is patterned after DEQ Guideline 8 suggestions and is thus designed to expand as mining progresses, continually maintaining adequate coverage for determining the extent of disturbance to the hydrologic balance. Should there be an unexpected disturbance to the hydrologic

balance, there would be ample time to modify mining activities. The postmine groundwater monitoring network will use several of the same wells which existed for the during-mining phase. In addition, Eagle Butte plans to install at least eighteen postmining monitoring wells in reclaimed spoils as mining and reclamation progresses. All postmining monitoring wells will be monitored until final bond release to determine the extent of disturbance to the hydrologic balance. The postmining groundwater monitoring program is based upon assessment of the hydrologic consequence and designed to determine infiltration rates, recharge capacity, hydraulic characteristic, subsurface flow, and groundwater quality within the reclaimed lands and the adjacent areas. The intent of the postmining groundwater monitoring efforts is to document the availability of groundwater and the suitability of the groundwater quality to be consistent with the approved postmining land use of livestock grazing and wildlife habitat. Plans for the proper installation, operation, maintenance, and removal of all necessary monitoring equipment are also described in Section 5.3.

- (i) *All constructed or upgraded roads and railroad spurs are included within the permit area from that point where they provide exclusive service and are covered by the reclamation bond (Chapter 4, Section 2(j)).*

A description of roads and transportation systems used during mining is provided by Section 3.3. All of these facilities are included in the permit area description, Section 1.8-1. Section 4.7 indicates that all man-made facilities, except those supporting the post-mine land use, will be reclaimed. Map 4.1-1 illustrates all facilities that will remain unreclaimed to support these uses. The annual reclamation bond for the permit includes the reclamation of the facilities that are not approved to support the postmine land use.

- (j) *All buildings and structures constructed, used, or improved by the operator will be removed and dismantled. All support facilities are designed to achieve the performance required by the applicable standards and should cause no significant harm to the environment or public health and safety (Chapter 4, Section 2(m) and (n)).*

A description of buildings and structures needed to conduct the operation is provided in Section 3.2. No constructed facilities, except for stockponds, are described in Section 4.1 as supporting the postmine land uses. Section 4.7 commits to the reclamation of these facilities.

- (k) *A detailed time schedule for the mining and reclamation progression has been included in the reclamation plan (Chapter 4, Section 2(k) and W.S. §35-11-406 (b)(xix)).*

Section 3.1.2 provides the location of the various components of the required mining and reclamation schedules. Specific schedules for topsoil, overburden and coal

removal are provided in Section 3.4. Specific schedules for backfilling, topsoil replacement and seeding are found within Section 4.8. Contemporaneous reclamation is discussed in Section 4.8.

Areas of Temporary Cessation of Operations (TCO) for reclamation scheduling are described in Section 4.6 and located on Map 4.2-2. Reclamation delays for these areas are justified due to the delay in additional mining of the east advance, or as in other areas, the need to utilize the TCO areas to support future mining operations.

- (l) *All exposed surface areas within the permit area will be protected and stabilized effectively to control erosion and air pollution attendant to erosion (Chapter 4, Section 2(q)).*

Protection of the air resource is discussed in Section 3.12.1. Most of these protection measures address road watering and surface stabilization practices. Procedures assuring protection of the air quality resource are further described in the current Air Quality Division Chapter 6, Section 3 Operating Plan, Permit No. 30-089-1. This current permit is valid through September 3, 2008.

- (m) *The mining and reclamation plan has been designed to minimize disturbance and adverse impacts on fish, wildlife, and related environmental values, and to achieve enhancement of these resources where practicable (Chapter 4, Section 2(r)).*

Restoration of fish and wildlife habitat is described in Section 4.5. These restoration plans, as well as all baseline characterizations have been reviewed and approved by the U.S. Fish and Wildlife Service and the Wyoming Game and Fish Department, as evidenced by letters in the review file dated April 7, 2005 and December 19, 2001, respectively.

- No. 3. *The proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area (W.S. §35-11-406(n)(iii)).*

Section 4.6 and supporting information provide sufficient evidence that no material damage to the hydrologic balance will be created by the operation.

A Cumulative Hydrologic Impact Assessment (CHIA) for the Little Powder River Area was prepared in February 2003 to assess the potential for material damage to the hydrologic balance due to the operation of Eagle Butte Mine, along with the operations of the Buckskin, Rawhide, Dry Fork, KFx, Fort Union and Wyodak Mines.

The finding was made that no significant long term or permanent damage from mining activities to the hydrologic balance (including surface and groundwater quality and quantity) will occur outside the permit areas of the coal mines. Based on available information, the Wyoming DEQ/LQD has determined that surface coal mining operations at Buckskin, Eagle Butte, Rawhide, Dry Fork, KFx, Fort Union and Wyodak Mines will impact the local

environment for a limited time. However, no permanent adverse impacts to the hydrologic system are expected and material damage to surface and groundwater quality and quantity is not expected to the drainage basin or aquifers as a whole.

A second CHIA titled *Cumulative Hydrological Impact Assessment of Coal Mining in the Northern Powder River Basin, Wyoming* (CHIA No. 15) was completed in February 2006. The CHIA included Eagle Butte Mine. Based upon the review of the CHIA combined with the location and small size of the proposed amendment, the LQD Administrator determined that a revised or updated PHC assessment or CHIA would not be required because no significant changes in the results of the PHC or CHIA were expected to occur as a result of the Scoria Amendment.

The applicant has committed to replacing any impacted water rights as specified in the Wyoming Coal Program which holds that coal mines are responsible for replacing any surface water right or supply affected by contamination, diminution, or interruption resulting from surface coal mining (W.S. §35-11-415(b)(xii) and 416(b)). The applicant's surface water and groundwater monitoring plans in Section 5.3 are sufficient to determine the extent of disturbance to the hydrologic balance outside the permit area and supports the approved post-mining land use.

- No. 4. *The area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to W.S. §35-11-425, within an area where mining is prohibited pursuant to Section 522(e) of P.L. 95-87, nor within an area under review for this designation in an administrative proceeding (W.S. §35-11-406(n)(iv)).*

In accordance with Sections 1.6 and 1.7, the only potentially designated areas unsuitable for mining are public roads. Mining nearby these areas are allowed because proper public notifications, waivers and consents have been obtained.

- No. 5. *The proposed operation contains alluvial valley floors within and adjacent to the permit area. However, it will not interrupt, discontinue, or preclude farming on said alluvial valley floor(s) that are irrigated or naturally subirrigated, excepting those undeveloped range lands within the alluvial valley floor(s) which are not significant to farming, or where the farming that might be precluded is of such a small acreage that its loss will have a negligible impact on the farm's agricultural production. The proposed operation will not materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors (W.S. §35-11-406(n)(v)).*

Much of Little Rawhide Creek has been declared an Alluvial Valley Floor (AVF) non-significant to farming as it diagonally traverses the northern part of the permit area from west to east. Coming from the south within and adjacent to the permit area other portions of Little Rawhide Creek and its tributaries have also been declared AVF. AVF declarations are documented in Section 2.10 and Appendix 2.10-4 of the permit.

Monitoring, mitigation, and reclamation plans presented in Subsections 3.5.8.7, 4.6.1, and 4.6.2 are designed to prevent material damage to water supplies for the declared AVF. Reclamation features to prevent long-term impacts and to restore Essential Hydrologic Functions to AVF areas adjacent to mining operations appear in Subsection 4.6.2.4.

No. 6. The area to be surface mined does not contain prime farmland (W.S. §35-11-406(n)(vi)).

According to the Natural Resources Conservation Service (formerly the Soil Conservation Service) no prime farmlands exist in Campbell County, Wyoming due to the lack of available irrigation throughout the growing season. Specifically, Section 2.7.5 declares that no prime farmlands are identified within the permit area.

No. 7. The schedule required by W.S. §35-11-406(a)(xiv) and the compliance review conducted by WDEQ/LQD suggests that all surface coal mining operations owned or controlled by the applicant are currently in compliance with this act and all applicable State and Federal laws, or that any violation has been or is in the process of being corrected to the satisfaction of the authority, department or agency that has jurisdiction over the violation (W.S. §35-11-406(n)(vii)).

The Form 11 application to relocate Highway 14/16 did not require an Applicant Violator System (AVS) Evaluation. The last AVS check was evaluated and results confirmed for any outstanding violations related to Scoria Amendment. No other outstanding violations were identified. The operator is currently in compliance with applicable State and Federal laws.

No. 8. Neither the applicant nor operator controls or has controlled mining operations with a demonstrated pattern of willful violations of such nature and duration with such resulting irreparable harm to the environment as to indicate reckless, knowing or intentional conduct (W.S. §35-11-406(o)).

The applicant has not demonstrated a pattern of willful violations demonstrating reckless, knowing or intentional conduct. A compilation of violations received by the applicant is provided by Section 1.10 of the permit.

No. 9. The applicant does not qualify for an experimental practice variance (Chapter 9).

Eagle Butte Mine has not applied for an environmental practice variance.

No. 10. All appropriate Federal, State, and Local government agencies with an interest in historic preservation have approved the proposed operation, because it will not adversely affect any site(s) included in, or eligible for inclusion in, the National Register of Historic Places. A plan to mitigate adverse effects has been approved by the State Historic Preservation Office, and other appropriate agencies, and has been incorporated in the applicant's mine plan (Chapter 12, Section 1(a)(v)(C)).

Section 2.3 of the application summarizes the assessment of archeological resources for the existing permit area. Appendix 2.3-14 of this section provides State Historic Preservation Office (SHPO) clearance for the proposed affected area prior to the approval of the Scoria Amendment. Additional clearance for all lands within the amendment lands is provided by SHPO in correspondence dated January 31, 2002. No archeological sites potentially eligible for the National Historic Registry were located within the permit area, nor are additional investigation suggested.

The following standard condition will apply here in this State Decision Document and be stated on the Form 1 for Permit No. 428:

The operator shall report any unanticipated discovery of cultural or paleontological resource to the Land Quality Division within five (5) days. Any unanticipated cultural or paleontological resource site(s) shall be protected from any disturbance until they have been evaluated and salvaged if necessary.

- No. 11. *Although the Eagle Butte Mine operation is not within one hundred feet of the outside right-of-way line of a public road, the road may be relocated or the area affected because the applicant has obtained the necessary approvals of the authority with jurisdiction over the public road prior to the term-of-permit within which the road will be constructed. Public notice and an opportunity for public hearings for this purpose have been provided and the required written finding has been made determining that the interests of the public and the affected landowners will be protected from the proposed operation (Chapter 12, Section 1(a)(v)(D)).*

The proposal to relocate Highway 14/16 was accepted by the Wyoming Department of Transportation (WYDOT) which is the authority with jurisdiction over the public Highway. WYDOT manages the performance standards with respect to road relocations and implements its own public notification process. Further, WYDOT agreed to make the Highway 14/16 relocation alignment permanent. Documentation for the WYDOT acceptance of the permanent Highway 14/16 relocation is provided in Section 3.1.5 and in Figure 3.3-5. The Highway relocation alignment is illustrated in Map 3.3-7.

Public notice and opportunity for public hearing for the relocation of Highway 14/16 have been provided by WYDOT through notices in the *Gillette News-Record* published January 25, 2006, February 1, 5, and 6, 2006, and March 5, 2006. A Public Open House and Information Meeting was held in Gillette on February 7, 2006 followed by a 30-day public comment period. Based on this information, the LQD Administrator determined that adequate public notice and an opportunity for public hearings were provided by WYDOT as the authority with jurisdiction over the public Highway, and the required written finding has been made determining that the interests of the public and the affected landowners will be protected from the proposed operation as per LQD Rules and Regulations Chapter 12, Section 1(a)(v)(D).

The majority of the Eagle Butte Mine operation will not involve mining within one hundred feet of the right-of-way of U.S. Highway 14-16. However, plans to conduct mining operation within one hundred feet of the right-of-way of U.S. Highway 14-16 and Wyoming Highway 59 are dispersed throughout the mining and reclamation plans resulting from previous Amendments and Mine Plan revisions. Specific plans to conduct blasting operations in proximity to the respective right-of-ways, including plans to control traffic, are designed to protect the public. These plans are provided in Section 3.8, with further discussion and consent provided by the Wyoming Department of Transportation in Section 1.4.17.

- No. 12. *For the term covered by the permit, the proposed operation will be consistent with other surface coal mining and reclamation operations proposed or contemplated in pending or approved mining permits (Chapter 12, Section 1 (a)(iv)(A)).*

Adjoining the Eagle Butte Permit area are the Dry Fork and Rawhide Mines, as well as a small portion of the Fort Union mine. Consent agreements with all of these entities are provided in Section 1.4 of the existing permit. During the existing and next future term of permit no proposed activities overlap the adjacent operations.

The following standard condition will apply here in this State Decision Document and be stated on the Form 1 for Permit No. 428:

Within ninety (90) days of each LQD approval revision to Permit No. 240 (Rawhide Mine) or Permit No. 599 (Dry Fork Mine) which affects the "Dual Permitted Area" between Permit Nos. 428 and 240 and between Permit Nos. 428 and 599, Eagle Butte Mine shall submit a revision to Permit Number 428. This revision application shall update and revise all text and maps associated with the "Dual Permitted Area" in order to bring Permit No. 428 into accord with the revised Permit No. 240 or Permit No. 599.

The LQD District 3 Office shall notify Eagle Butte Mine of the need to submit any such revisions. Further, Eagle Butte Mine shall submit a letter from the permittee for Permit No. 240 or Permit No. 599 whenever Eagle Butte Mine submits a revision application which affects lands within the "Dual Permitted Area" between Permit Nos. 428 and 240 and between Permit Nos. 428 and 599. This letter shall state that the permittee believes the proposed revision is in compliance with all agreements between the two companies. This letter shall be incorporated into Permit Number 428 as an element of the revision application.

- No. 13. *The mining and reclamation activities proposed will not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats (Chapter 4, Section 2(r)(iii)).*

The U.S. Fish and Wildlife Service has reviewed the Wildlife Monitoring plan in Section 5.6 and has determined that as long as the operation is conducted as proposed all wildlife

issues of Federal interest will be adequately addressed. This non-jeopardy decision is provided in an April 7, 2005 letter. Wyoming Game and Fish Department provided further review and concurrence with the Wildlife Monitoring plan.

- No. 14. *No mining or reclamation activities will take place within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, or any National Forest (Chapter 12 Section 1(a)(v)(A) and (B)).*

No surface lands administer by the Federal government lie within or adjacent to the permit area, therefore no mining will take place within the aforementioned boundaries. Surface ownership within and adjacent to the permit area is provided by Section 1.6 and 1.7 of the permit, respectively.

- No. 15. *No mining or reclamation activities will be conducted within three hundred (300) feet of any occupied dwelling, public building, school, church, community, institutional building, or public park, nor within one hundred feet of a cemetery (Chapter 12, Section 1(a)(v)(E), (F), and (G)).*

Eagle Butte Mine does not propose to mine within three hundred (300) feet of the aforementioned structures or facilities. Map 1.9-2, Manmade Features, illustrates that none of the aforementioned public facilities are present within this distance restriction.

- No. 16. *Public notice for the relocation of Highway 14/16 was given by WYDOT in the Gillette News-Record from January 25, 2006 through February 6, 2006, and on March 5, 2006. As the public road authority with jurisdiction over Highway 14/16, WYDOT addressed public comment and finalized the plan for the relocation of Highway 14/16.*

Foundation Coal West, Inc. has demonstrated that the Eagle Butte Mine surface coal mine permit application substantially complies with Article 4 of the Wyoming Environmental Quality Act and all other applicable State and Federal Laws and Regulations. As authorized by W.S. §35-11-406(n) and in compliance with W.S. §35-11-406(p) I do hereby recommend the issuance of Permit No. 428-T5 to the Foundation Coal West, Inc Eagle Butte Mine with the following standard conditions, as required by Wyoming Department of Environmental Quality, Land Quality Division Rules and Regulations Chapter 12, Section 1(a)(ix):

- (A) *All operations shall be conducted in accordance with the approved mining and reclamation plan and any conditions of the permit or license;*
- (B) *The rights of entry shall be provided as described by the Act and any regulations promulgated pursuant thereto;*
- (C) *The operation shall be conducted in a manner which prevents violation of any other applicable State or Federal law, and*

- (D) *All possible steps shall be taken to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with this approved mining and reclamation plan and other terms and conditions of any permit or license, including monitoring to define the nature of the noncompliance and warning of any potentially dangerous condition.*
- (E) *All reclamation fees shall be paid as required by Title IV, P.L. 95-87, for coal produced under the permit for sale, transfer or use.*

Signed this 2 day of August, 2007.



Richard A. Chancellor
Administrator, Land Quality Division